

# May 2006

## Update: Crime Victim Rights Manual (Revised Edition)

### CHAPTER 5

#### Victim Privacy

##### 5.9 Limitations on Access to Court Records

###### A. General Provisions Limiting Access to Court Records

Delete the November 2005 update to page 107. In an order dated March 29, 2006, the Michigan Supreme Court reversed the Court of Appeals and remanded the case to that Court for further proceedings. *UAW v Dorsey*, 474 Mich 1097 (2006).

## CHAPTER 8

### The Crime Victim at Trial

#### 8.13 Testimonial Evidence of Threats Against a Crime Victim or a Witness to a Crime

##### C. Statutory Authority for the Admission of Threat Evidence in Cases Involving Domestic Violence

Effective March 24, 2006, and applicable to trials and evidentiary hearings started or in progress on or after May 1, 2006, a declarant's statements are admissible under specific circumstances in criminal cases involving domestic violence. 2006 PA 79. Immediately before Section 8.14 on page 260, add a new subsection as indicated above and insert the following text:

MCL 768.27c provides statutory authority for the admission under certain circumstances of a declarant's statement pertaining to injuries sustained by, or threats of injury to, the declarant. A declarant's statement may be admitted under MCL 768.27c if all of the following circumstances exist:

“(a) The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.

“(b) The action in which the evidence is offered under this section is an offense involving domestic violence.

**Note:** The definition of “domestic violence” in MCL 768.27c is substantially similar to the definition in MCL 400.1501(d), and by reference, to the definition in MCL 600.2157a(1)(b).<sup>\*</sup> MCL 768.27c(5)(b).

“(c) The statement was made at or near the time of the infliction or threat of physical injury. Evidence of a statement made more than 5 years before the filing of the current action or proceeding is inadmissible under this section.

“(d) The statement was made under circumstances that would indicate the statement's trustworthiness.

“(e) The statement was made to a law enforcement officer.” MCL 768.27c(1).

The statute includes, but does not limit, factors for determining whether a declarant's statement is trustworthy for purposes of MCL 768.27c(1)(d). To determine whether a statement is trustworthy, a trial court should consider:

<sup>\*</sup>See Section 5.7(A)(2) for a detailed discussion.

“(a) Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.

“(b) Whether the declarant has a bias or motive for fabricating the statement, and the extent of any bias or motive.

“(c) Whether the statement is corroborated by evidence other than statements that are admissible only under this section.” MCL 768.27c(2).

Notice requirements apply if a prosecutor intends to introduce evidence of a declarant’s statement under MCL 768.27c:

“(3) If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown.”